



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 15942242

Date: AUG. 9, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a biochemistry researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver under the *Dhanasar* framework.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

¹ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as a “postdoctoral fellow in the Department of [REDACTED] at the University of [REDACTED]” With regard to the Petitioner’s research duties, the record includes a letter from [REDACTED] professor of [REDACTED] and neurosurgery at University of [REDACTED] stating that the Petitioner is responsible for independently designing and executing “different biological assays related to [REDACTED] brain tumor [REDACTED] using [REDACTED] small molecules inhibitors as well as the [REDACTED] brain tumor [REDACTED] [REDACTED] through different signaling pathways.” In addition [REDACTED] indicated that the Petitioner “is currently involved in three different brain tumor studies” and that his responsibilities include publishing and presenting his research findings. For the reasons discussed below, we conclude the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his work “identifying unrecognized therapeutic targets for the development of [REDACTED] brain tumor treatments.” He explained that his research involves discovering optimal target zones within the brain “for important medical procedures and surgeries aimed at removing [REDACTED] brain tumors while preserving vital bodily functions.”

As evidence that his proposed research has substantial merit and national importance, the Petitioner provided letters of support discussing how his undertaking stands to advance treatment methods for [REDACTED] suffering from [REDACTED] tumors. He also presented information about the incidence of [REDACTED] brain tumors in the United States. Additionally, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications for the field, as the results are disseminated to others in the field through medical journals and conferences. As the Petitioner has demonstrated both the substantial merit and national importance of his proposed research, we agree with the Director’s determination that the Petitioner meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes his curriculum vitae, academic records, published articles, peer review activity, and documentation of numerous articles that cited to his research findings. In addition, the Petitioner offered reference letters

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

describing his expertise in biochemistry research and his past record of success in that field. Several expert references identify specific examples of how the Petitioner's research progress involving novel therapeutic targets in [] and cancer biology has affected his field. As corroborating documentation regarding the significance of his work, the Petitioner provided citation evidence showing that his published work has been frequently cited by independent researchers, and that the rate at which his work has been cited is high relative to others in the field. His experience and expertise as a biochemist, published articles, citation evidence, record of success contributing to various research projects, and progress in his field position him well to advance his proposed endeavor. Accordingly, the record supports the Director's determination that the Petitioner satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In denying the petition, the Director concluded that the Petitioner did not meet this prong because the record did not show he is "the principal investigator of projects in the United States that can significantly influence your field." In addition, the Director stated that the Petitioner's "inability to obtain a permanent position with your employer, which is certainly free to offer you a permanent position, does not buttress your case."

While the Petitioner's research contributions and the national interest in his contributions are relevant factors for consideration under prong three of the *Dhanasar* framework, there is no requirement that a petitioner demonstrate that he is "the principal investigator of projects . . . that can significantly influence [his] field" in order to satisfy this prong. The Director's analysis was also problematic because it incorrectly implies that the lack of a permanent job offer from the Petitioner's current employer is an adverse factor under *Dhanasar*'s third prong. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to present a job offer from a specific employer.

As a biochemist, the Petitioner possesses considerable experience and expertise in research relating to cancer biology. The record also demonstrates the widespread public health benefits associated with research progress in improving treatment methods for [] suffering from [] tumors. In addition, the Petitioner has documented his past successes in advancing research relating to therapeutic targets for [] and publishing influential research findings. Based on the Petitioner's track record of successful research and the significance of his proposed work to advance U.S. public health interests, we conclude that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We conclude that he has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.